

APPEAL NO. 020526
FILED APRIL 11, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 28, 2002, with the record closing on February 6, 2002. The hearing officer determined that the appellant (claimant) should not have been permitted to change her treating doctor from Dr. P, an orthopaedic hand specialist, to Dr. S, a chiropractor, and that the claimant did not have disability on or after July 30, 2001.

The claimant appealed, asserting that she had changed treating doctors pursuant to the criteria in Section 408.022(c), that her relationship with Dr. P was jeopardized because he did not speak Spanish (the claimant's native language), and that Dr. S had taken her off work effective July 31, 2001. The claimant also cites authority that a conditional or light-duty release is evidence that disability continues, that a bona fide offer of employment (BFOE) was not an issue, and that no BFOE was made. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to her left thumb on _____. Dr. P was her treating doctor and in office notes of July 25, 2001, indicated that if the claimant was doing well in a month, he would schedule her "for [maximum medical improvement] disability evaluation." On a Work Status Report (TWCC-73), Dr. P released the claimant to light duty with the restriction that she must "wear splint cast at work" as of July 25, 2001. On July 26, 2001, the carrier and the employer verbally advised the claimant that the employer would accommodate the claimant's restrictions at her regular wages effective Monday, July 30, 2001. The claimant called in sick to the employer and saw Dr. S on July 30, 2001. Dr. S took the claimant off work and office staff completed an Employee's Request to Change Treating Doctors (TWCC-53) for the claimant's signature.

Section 408.022 deals with the selection of a doctor and circumstances under which a treating doctor may be changed. Section 408.022(d) provides that a "change of doctor may not be made to secure a new impairment rating [IR] or medical report." The hearing officer specifically found that the reason for the claimant's request to change treating doctors "was to secure a new medical report concerning disability and to avoid receiving an [IR]." The evidence could give rise to different inferences and the claimant's appeal details the evidence from her point of view. The hearing officer, however, is the sole judge of the weight and credibility that is to be given to the evidence. Section 410.165(a).

Disability is defined in Section 401.011(16) as the inability because of the compensable injury to obtain and retain employment at the preinjury wage. While it is true

that BFOE was not an issue and a release to light duty is evidence that disability continues, in this case, the employer offered the claimant employment within her restrictions at the preinjury wage. That offer constitutes evidence that disability, as defined in Section 401.011(16), had ended. We find the hearing officer's decision supported by the evidence.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZENITH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JEFF AUTREY
ROEN & AUTREY
710 FIRST STATE BANK
400 W. 15TH STREET
AUSTIN, TEXAS 78701-1647.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Edward Vilano
Appeals Judge